

**FILED**

**OCT 27 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE EVER MEJIA-CASTILLO,

Defendant - Appellant.

No. 04-50386

D.C. No. CR-04-00218-NM-01

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
William J. Rea, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Jose Ever Mejia-Castillo appeals the 57-month sentence imposed following his guilty-plea conviction for being an alien found in the United States after removal, in violation of 8 U.S.C. § 1326(a) and (b)(2). We have jurisdiction under 28 U.S.C. § 1291.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we would normally vacate the sentence and remand to the district court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error)

Because in this case the sentencing judge is no longer available, we vacate the sentence and remand for the district court to proceed pursuant to *Ameline*. See *United States v. Sanders*, 421 F.3d 1044, 1051-52 (9th Cir. 2005).

**SENTENCE VACATED and REMANDED.**